

15.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 13.05.2013**

% **W.P.(C) 8159/2011**

K.L.CHHABRA

..... Petitioner

Through: Mr. Yashpal Rangi, Advocate along
with petitioner in person.

versus

PUNJAB NATIONAL BANK THROUGH
ITS ASSISTANT GENERAL MANAGER

..... Respondent

Through: Mr. Jagat Arora & Mr. Rajat Arora,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present petition under Article 226 of the Constitution of India to assail the order dated 14.06.2010 and the award dated 27.08.2010 passed in I.D. No.26/2009. The first is the order passed by the Central Government Industrial Tribunal-I, Karkardooma Courts Complex, Delhi (CGIT) on the preliminary issue with regard to the legality and validity of the domestic inquiry held by the respondent management against the petitioner workman and the second is the final award passed by the CGIT, whereby the reference with regard to the removal of the petitioner from service was answered by substituting the penalty of dismissal without notice to that of removal from service with superannuation benefit and

without disqualification from future employment.

2. The petitioner was posted as Computer Operator category 'B' at Naraina Vihar Branch of the respondent Punjab National Bank on 16.01.2006. In respect of an incident which took place on that day, in the said branch, involving the petitioner, a charge-sheet was served upon him on 04.02.2006. The petitioner was suspended on 16.01.2006 itself. The charge made against the petitioner was as follows:

"It is alleged that while working as CTO Category 'B' at BO:Naraina Vihar, New Delhi on 16.01.2006, you embezzled the amount of Rs.3000/-. The detail of the embezzled transaction is given below. It is reported against you that:

- *On 16.01.2006 at 11.00 A.M., Shri Vijay Kumar tendered one withdrawal slip form for Rs.3000/- along with the passbook in S/F A/c No. 01-336983 in the name of Shri Amarnath Prasad. After entering/posting the withdrawal slip in the system and verifying the specimen signature/Balance in the A/c you returned the passbook to Shri Vijay Kumar and told him that payment will be made to Shri Amarnath Prasad A/c holder. However in computer the amount was debited in SF A/c No. 336983 at 11.17 A.M.*
- *In the evening when the A/c holder Shri Amarnath alongwith Shri Vijay Kumar came to the Branch to collect the payment you told him that you had already made the payment to the bearer of withdrawal slip, Shri Vijay Kumar in the morning. After exchange of arguments between the A/c holder Shri Amarnath Prasad and you. Shri Amarnath Prasad lodged a written complaint about non receipt of payment in lieu of the Withdrawal Slip. In this way you did not give the payment of Rs.3000/- to the customer after debiting his account and pocketed the customer's money.*

- *On the same day your comments were called and you were instructed to submit your reply immediately but you did not submit any reply.*

Your above act constitute gross misconduct in terms of para 5(d) & (j) of the Bipartite settlement dt. 10.04.2002 as amended from time to time.”

3. Since the petitioner denied the charges, a domestic inquiry was held against him. The management led the evidence of four witnesses. They were:

- (i) MW-1 Mr. Virender Kumar Singh – one of the complainants.
- (ii) MW-2 Mr. Prem Sharma – Bank Officer
- (iii) MW-3 Mr. Naresh Passi – Bench Officer
- (iv) MW-4 Mr. Vijay Kumar- the person who claimed to have presented the withdrawal slip in the morning.

4. The petitioner led his own evidence in defence. On the basis of the evidence recorded before him, the Inquiry Officer made the inquiry report holding that charges against the petitioner as proved. After granting an opportunity to show-cause on the basis of the inquiry report, which was availed of by the petitioner, the Disciplinary Authority issued the orders for dismissal of the petitioner from service without notice on 16.08.2007. The departmental appeal preferred by the petitioner also failed. Consequently, he raised the aforesaid dispute which was referred to the Tribunal for adjudication by the Appropriate Government vide notification dated 01.06.2009. As aforesaid, the aspect of legality and validity of the domestic inquiry was decided by the Industrial Tribunal after recording evidence vide

order dated 14.06.2010. Since the said issue was decided in favour of the respondent management, the aspect of proportionality of punishment was considered by the impugned award dated 27.08.2010. On account of the past instances, wherein the petitioner had demonstrated his honesty, the punishment was substituted from dismissal without notice to removal from service with superannuation benefits and without disqualification for future employment.

5. Learned counsel for the petitioner has sought to assail the order dated 14.06.2010 as well as the impugned award on several grounds. It is firstly submitted that the petitioner - throughout his service, was repeatedly suspended and reinstated on various occasions. He was also transferred about 15 times in a span of about 10 years of service. Learned counsel submits that the present was a case of victimisation of the petitioner by the respondent management. A false & fabricated case was set up so as to get rid of the petitioner.

6. This submission of learned counsel for the petitioner has been duly considered by the Industrial Tribunal by observing that in the facts and the evidence brought on record, which could not be wished away, the submission that the case against the petitioner was false and fabricated, was not sustainable. I agree with this finding of the Tribunal, in view of, some of the aspects of the matter – that I intend to discuss hereinafter. The conduct of the delinquent has to be examined objectively in the light of the evidence brought forth in the enquiry. Merely because a workman may have been victimized earlier, is no ground to conclude that the charge under examination is false and fabricated. Such past history may only justify a

chosen scrutiny of the evidence against the delinquent, but cannot be a ground in itself to dismiss the charges as baseless. I may hasten to add that there is nothing to conclude that the petitioner had been victimized in the past.

7. Learned counsel for the petitioner submits that Mr. Virender Kumar Singh was examined as MW-1, even though he was not mentioned in the list of witnesses which was given to him on 25.02.2006. This submission of the petitioner has no merit for the reason that in departmental inquiries, strict rules of evidence and procedure do not apply. Mr. Virender Kumar Singh was one of the two complainants regarding the incidence in question. The justification of the respondent management to produce him as the management's witness, therefore, cannot be questioned. Moreover, there is no material on record to suggest that the petitioner raised any objection contemporaneously to the examination of the said witness. The petitioner was granted, and did avail of, the opportunity to cross-examine the said witness. Thus, no prejudice was suffered by the petitioner. Resultantly, there is no merit in this submission of the petitioner.

8. Before proceeding to deal with the next submission of the petitioner, I deem it appropriate to set out the case set up against the petitioner, and as it emerges from the record. It was the respondent's case that Vijay Kumar, MW-4- who was of tender age and not even a major at the relevant time, came to the branch in the morning of 16.01.2006 with the passbook and withdrawal form of the account holder Mr. Amar Nath Prasad, who was maintaining his account with the Naraina branch of the respondent bank for withdrawing a sum of Rs.3,000/-. The withdrawal form had been signed on

the front as well as on the reverse side by the account holder. Upon his turn, the said Vijay Kumar presented the passbook and the withdrawal form at the withdrawal counter, which was then occupied by the petitioner. The signatures were verified, account balance was checked and debited by Rs.3,000/-. The said Mr. Vijay Kumar was enquired, whether he was the account holder, to which he said no. Mr. Vijay Kumar was then informed that the account holder should himself come to collect the money. The said Mr. Vijay Kumar was given the pass book only, while the withdrawal form was retained by the petitioner. The said Vijay Kumar went back. Mr. Virender Kumar Singh MW-1, who had instructed Mr. Vijay Kumar to withdraw the amount, learnt of money not being delivered to Mr. Vijay Kumar. Mr. Vijay Kumar is the nephew of the account holder Mr. Amar Nath. In the evening at around 06:00 – 06:30 P.M, the said Mr. Vijay Kumar and Mr. Virender Kumar Singh again came to the bank. In the evening shift, the petitioner was sitting at the Teller's seat. There was a heated exchange of words between the petitioner and the said Mr. Virender Kumar Singh which was witnessed, *inter alia*, by MW-2 Mr. Prem Sharma, who was also on duty. He enquired about the argument. It was revealed that Mr. Vijay Kumar has tendered the withdrawal slip for Rs.3,000/- pertaining to the account of Mr. Amar Nath Prasad , and that Mr. Chhabra – the petitioner had asked Mr. Vijay Kumar to come in the evening with the account holder to collect the payment of Rs.3,000/- on the pretext that the payment can be made to the account holder only. When Mr. Virender Kumar along with Vijay Kumar came to the branch to collect the payment and requested Mr. Chhabra for the same, the petitioner - Mr. Chhabra informed Mr. Virender Kumar that he had already made payment to the bearer of the withdrawal

form in the morning. This led to Mr. Virender Kumar raising a hue & cry and threatening to call the police and the press. The account holder Mr. Amar Nath was called, and he too came over to the bank branch. Mr. Prem Sharma telephonically informed the Chief Manager Mr.G.S. Ahluwalia of the situation, whereupon Mr.G.S. Ahluwalia came to the branch passed orders to pay Rs.3,000/- to Mr. Amar Nath Prasad by debiting the amount from the suspense account. The petitioner - Mr. Chhabra was observed, asking the complainant to meet him outside the bank premises to settle the case, which was refused by Mr. Virender Kumar.

9. Coming back to the third submission of learned counsel for the petitioner, learned counsel submits that there was a discrepancy in the statements made by Mr. Vijay Kumar-MW-4 and Mr. Virender Kumar-MW-1. Whereas Mr. Vijay Kumar, MW-4 had stated that after he did not receive the payment in the morning, he phoned Mr. Virender Kumar and informed him of the same – who told him that he will come back and check, Mr. Virender Kumar Singh-MW-1 in his statement had stated that he came to the factory about 5 P.M. and asked Vijay Kumar to give him the cash, and at that stage, Mr. Vijay Kumar said that the pass book had been returned and the withdrawal slip had been kept by the bank person, and the bank person said that the money will be given to the account holder only. The discrepancy is regarding the manner and the time at which the non-payment of the amount of Rs. 3,000/- was conveyed by Vijay Kumar to Virender Kumar.

10. The incident is of 16.01.2006. The statement of Mr. Virender Kumar Singh, MW-1 was recorded on 16.08.2006, i.e., after a period of eight

months. The statement of Mr. Vijay Kumar was recorded on 23.11.2006, i.e., after eleven months. Therefore, it is likely that one or the other of the witnesses may not have recollected the entire incident accurately. Even otherwise, the aforesaid deviation or discrepancy appears to be a minor one when seen in the context of the consistent case set up and narrated by both these witnesses with regard to the entire incident of Mr. Vijay Kumar visiting the bank in the morning with the withdrawal form and the pass book; of his not being given the cash and only being returned the pass book, and; being asked to come back later with the account holder. There is also consistency with regard to the incident which took place in the evening- that Mr. Vijay Kumar and Mr. Virender Kumar Singh went to the bank to collect the money. In domestic inquiries, the strict rules of evidence and procedures do not apply. The aspect of appreciation of evidence falls exclusively in the domain of the Inquiry Officer and unless the same appears to be bordering on perversity, i.e., where some material evidence has been ignored or irrelevant material has been considered, or a finding is returned contrary to the evidence brought on record, it is not for the Industrial Adjudicator, much less for this Court, to interfere with the findings of fact in the exercise of writ jurisdiction. The aforesaid discrepancy is a minor one and does not, in any way, weaken the foundations of the case set up by the management against the petitioner. Accordingly, this submission of the petitioner is rejected.

11. The next submission of learned counsel for the petitioner is that the evidence of three witnesses namely MW-1, MW-2 & MW-3 were recorded on 16.08.2006 behind the back of the petitioner. Learned counsel submits

that the petitioner was asked to sit in a separate room while the statements of the said three witnesses were recorded. This statement of the petitioner was made before the Tribunal as well. The same has been considered and rejected and, in my view, rightly so. The submission of the petitioner that he was not present when the examination-in-chief of the three witnesses was recorded, is premised on the absence of signatures of the petitioner and his defence assistant on the proceeding sheets of 16.08.2006. The Tribunal has referred to the recordings made in the proceeding sheets of various dates, including when other witnesses were examined admittedly in the petitioners presence. In none of these proceeding sheets the signatures of the petitioner, or his defence assistant was taken, except when the petitioner himself had been examined. In this regard, reference may be made to paras 35-36 of the order dated 14.06.2010. Therefore, the material relied upon by the petitioner to claim that he was not allowed to participate when the examination-in-chief of MW-1, 2 & 3 took place, does not support the petitioner's contention. Moreover, it is pertinent to note that in the inquiry report in para 3.6 the Inquiry Officer records as follows:

“On 16 August 2006, the PO and CSE were present but the DA was absent. The CSE, requested change of DA from Shri Dleep Mehta to Shri R.K. Sharma, citing the reason that Shri Dleep Mehta is unable to perform effectively, and submitted the consent letter of Shri R.K. Sharma in this regard (Exb E-5 and Exb E-6): The request of CSE for change of DA was accepted by EO. The PO reported that inspection of documents was still not been done by CSE. EO advised CSE to inspect the documents in his presence and gave 30 minutes for the same. CSE inspected the original documents in the presence of the EO, but CSE refused to give a certificate confirming inspection of the same. Management documents M-1 to M-7 were taken

on record. CSE had requested for providing of attested copies of some payments made by him which were allowed by EO. Examination-in-Chief of 3 Management Witnesses (MW-1, MW-2, MW-3) was held, however cross-examination of these witnesses was postponed to a subsequent date as per request of CSE that since DA was absent, he may be permitted to undertake the cross-examination in presence of DA.”

12. The petitioner was provided with copy of the inquiry report when he was given the opportunity to show-cause vide a show-cause notice dated 27.06.2007. The petitioner responded to the said notice on 14.08.2007. A perusal of the petitioner's response to the show-cause notice shows that the petitioner did not raise any grievance with regard to the recording made in para 3.6 of the inquiry report, as aforesaid. It is also pertinent to note that when the examination-in-chief of Mr. Virender Kumar Singh, MW-1 was conducted on 16.08.2006, the said witness complained that the petitioner was trying to get in touch with the witness to influence him. The relevant extract from the examination-in-chief of Mr. Virender Kumar Singh MW-1 reads as follows:

“Q8: After that, did you get the payment?

A8: Yes, I got the payment and went away.

Q9: Then?

A9: After about 10 days or so Mr. Chabra has phoned me and told me that you have received your money of Rs. 3000 – now you need not go anywhere. About three-four days back also, he has phoned me not to go for Enquiry or anywhere else, saying – ‘you will not get any difficulty, and I will get your account opened somewhere else’.

Sir, my request is that Mr. Chabbra should not phone me again.

EO to CSE : Please do not telephone, contact or influence the witness in any manner.

CSE to EO: Sir, noted for future – however if you want you may dismiss me from service. Anyway, I will get my dismissal quashed from the Court.”

13. The aforesaid recording shows that the petitioner, i.e., the charged officer (CSE) was present when the witness MW-1 was examined in chief. Otherwise, there was no question of the aforesaid recording being made with regard to the Inquiry Officer asking the petitioner not to telephone, contact or influence the witness in any manner, and the petitioner responding by saying that he had noted the same for future and that in case he wants to dismiss the petitioner from service, he may do so. Anyway, he will get his dismissal quashed from the Court. The petitioner has not been able to show from the record that, at any stage, he disputed the aforesaid recording, by claiming that the same was imaginary, forged and fabricated. Accordingly, this submission of the petitioner being merit less is rejected

14. Learned counsel for the petitioner next contended that even though a Close Circuit TV (CCTV) camera is installed on which the incident of the morning would have been recorded, the management did not produce the said recording in the inquiry. Once again, a perusal of the inquiry proceedings shows that no such request was made by the petitioner to require the production of the said CCTV recording. Only subsequently, i.e., after the inquiry was concluded, the petitioner started raising the said issue which could only be described as an afterthought.

15. No other submission has been advanced by learned counsel for the

petitioner.

16. The scope of interference in writ jurisdiction in matters of the kind that I am dealing with, is limited. The Supreme Court in ***Syed Yakoob Vs K.S. Radhakrishnan and Others***, AIR 1964 SC 477, has dealt with the aspect about the scope of the jurisdiction of this Court under Article 226 of the Constitution of India in the following manner:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence,

that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque [(1955) 1 SCR 1104] Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam [(1958) SCR 1240] and Kaushalya Devi v. Bachittar Singh [AIR 1960 SC 1168])”

(emphasis supplied)

17. In *State of Haryana & Another Vs. Rattan Singh*, (1982) 1 LLJ 46 : (1977) 2 SCC 491, in respect of the departmental inquiry, the Supreme court observed as follows:

“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both

sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

18. The evidence led by the four management's witnesses including the two complainants certainly constitutes "some evidence". Pertinently, the petitioner did not claim, and did not show that the complainant Mr. Vijay Kumar and Mr. Virender Kumar Singh have any grudge or animosity towards the petitioner. They had no reason to make a false complaint against the petitioner. The fact that the Bank Manager decided to defray the amount of Rs.3,000/- from suspense account to pacify the complainant contemporaneously, also shows that the situation has turned serious in the

evening of 16.01.2006 and, had the complaint not appeared to be genuine, the respondent bank certainly would not have made the payment to the complainants.

19. The submission of learned counsel for the petitioner that the account holder Mr. Amar Nath Prasad was not examined is neither here nor there. Since it was the case of the management and the complainants that it was Mr. Vijay Kumar, who had come to the bank to withdraw the amount from the account of Mr. Amar Nath Prasad, and he was not delivered the money by the petitioner, it was sufficient for the management to have led the evidence of Mr. Vijay Kumar and Mr. Virender Kumar Singh. In case the petitioner was so inclined, he could have produced Mr. Amar Nath Prasad as his own witness. However, he chose not to do the same. Therefore, it could not be said that the present was a case of no evidence. The Inquiry Officer has noted that on the withdrawal form, only the signatures of Mr. Amar Nath Prasad were present both on the front and the rear side. Since it was Mr. Vijay Kumar who came to withdraw the money, his signatures would have been taken by the petitioner on the reverse of the said form, had the cash been delivered to him. This also showed that cash was not paid to the tenderor of the instrument by the petitioner on 16.01.2006.

20. Another aspect noted in the inquiry report is that the petitioner did not note on the back of the withdrawal form the denomination of the currency notes allegedly delivered by him -which is a normal banking practice. This too showed that the currency notes were not tendered to Mr. Vijay Kumar in the morning of 16.01.2006.

21. The Supreme Court in ***Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Others***, 1989 1 LLN 1, has held that this Court while examining the award in judicial review should try to sustain, as far as possible, the awards made by the Industrial Tribunals, instead of picking holes here and there in the awards on trivial points as that would frustrate the entire adjudication process before the Tribunals. The Supreme Court held that industrial awards should not be interfered with on hyper-technical grounds. The Supreme Court in ***Management of Madura Cooperative Sugar Mills***, AIR 2005 SC 1954, again had the occasion to deal with the aspect of the scope of this Court under Article 226 & 227 of the Constitution of India. While examining the industrial award the Supreme Court in para 12 observed as follows:

“Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such

an approach by the learned single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.”

22. So far as the proportionality of the punishment is concerned, the past instances of the petitioner exhibiting honest conduct has already been considered by the Industrial Tribunal and the punishment stands modified from dismissal from service to removal with retiral benefits and by holding that the removal shall not constitute disqualification for future employment. In my view, the past conduct cannot carry the petitioner any further in view of the established misconduct involving the incident in question.

23. In the light of the aforesaid, I do not find any infirmity in the impugned order dated 14.06.2010, as well as the impugned award dated 27.08.2010 and, therefore, dismiss the petition leaving the parties to bear their respective Costs.

24. The respondent, it is informed, has not complied with the award even though the respondent has not assailed the award. The said conduct of the respondent cannot be appreciated. The respondent should positively comply with the award within the next four weeks, provided there is no legitimate reason for the said non-compliance, and for which the petitioner is responsible. In case the award is not so complied with, the outstanding amount shall be paid with interest @ 8% per annum from the date amount became due, till payment.

VIPIN SANGHI, J.

MAY 13, 2013

BSR